IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 393 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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HARGOVIND DAMJI

Versus

COMMISSIONER OF INCOME TAX

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Appearance:

1. INCOME TAX REFERENCE No. 393 of 1984

MR TUSHAR HEMANI WITH MR SN SOPARKAR for Petitioner No. 1

MR BB NAIK for Respondent No. 1

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CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 27/06/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

At the instance of the assessee, the Income-tax Appellate Tribunal, Ahmedabad "A" Bench, Ahmedabad has

referred the following question of law for the opinion of this Court :-

"Whether on the facts and in the circumstances of the case, the assessment made by the ITO is barred by limitation ?"

2. The assessment year in question is the assessment year 1973-74. The assessee filed a return of income on 14.8.1973 declaring the total income of Rs.10,904/-. The due date for filing the return under Section 139(1) of the Income-tax Act, 1961 was 30.6.1973. However, the Central Board of Direct Taxes had issued a circular on 20.6.1973 extending the time for filing the return for the assessment year 1973-74 upto 15.8.1973. The assessee thereafter filed the revised return on 22.3.1976 disclosing the total income of Rs.11,304/-. The Income-tax Officer processed the said return and completed the assessment on 15.3.1977 treating the return filed on 22.3.1976 as a valid return and determined the total income of the assessee at Rs.79,460/-.

3. The assessee has challenged the said assessment in appeal before the first appellate authority and one of the contentions raised in the said appeal was that the second return filed by the assessee should have been treated as non-est in law as Section 139(5) of the Act enables an assessee to file a revised return only if he has filed a return under Section 139(1) or Section 139(2). In the case of the assessee, since the assessee has not filed the return under Section 139(1) or Section 139(2), the original return filed by the assessee can be treated as return filed only under Section 139(4) and hence the provisions contained in Section 139(5) could not have been attracted. With regard to return filed on 22.3.1976, it was stated that since the said return was not a valid return, the Income-tax Officer should have completed the assessment on or before 31.3.1976 in view of the provisions contained in Section 153(1)(a)(iii) of the Act. The assessment was further challenged on the ground of limitation by contending that the benefit contained in Section 153(1)(c) of the Act enabling the Income-tax officer to complete the assessment within one year from the date of filing of the revised return cannot be availed of by the Income-tax Officer. The first appellate authority rejected this contention of the assessee vide his order dated 17.1.1981 holding that the return filed by the assessee on 14.8.1973 was a voluntary return under Section 139(1) of the Act. It was further held that the order passed by the Income-tax officer on 15.3.1977 was not barred by limitation and valid.

4. Being aggrieved by the said decision of the first appellate authority, the assessee has taken up the matter before the Tribunal and the Tribunal vide its order dated 24.3.1984 has held that the assessment made was well within the time mentioned in Section 153 of the Act. The Tribunal has emphatically approved the action of the authorities below on the ground that the original return was filed under Section 139(1) of the Act and consequently revised return filed on 22.3.1996 could be treated as return filed under Section 139(5) of the Act. Since the first return was voluntarily filed under Section 139(1) of the Act which was revised later on, the assessment order passed on the basis of the revised return was a valid assessment. The Tribunal has also observed that the effect of the Board's Circular No. 113 dated 20.6.1973 was to the effect that all returns filed upto 14.8.1973 would be the returns filed under Section 139(1) of the Act. The Tribunal has thus come to the conclusion that the assessment as framed was well within the period of limitation.

5. Being aggrieved by this judgment and order of the Tribunal, the above reference was made before this Court raising the question of law as referred to hereinabove for our opinion.

6. Heard Mr Tushar Hemani, learned advocate for Mr SN Soparkar, learned Senior Advocate appearing for the appellant and Mr BB Naik, learned Standing Counsel appearing for the department. Mr Hemani, the learned advocate has challenged the order of the Tribunal mainly on the ground that the Central Board of Direct Taxes has no power or authority to issue Circular No. 113 having regard to the provisions contained in Section 119 of the Act. He has invited our attention to the provisions contained in Section 119(2)(a) of the Act which reads as under :-

> "(a) the Board may, if it considers it necessary or expedient so to do, for the purpose of proper and efficient management of the work of assessment and collection of revenue, issue, from time to time (whether by way relaxation of any of the provisions of Secs. 143, 144, 147, 148, 154, 155, 210, 217 and 273 or otherwise), general or special orders in respect of any class of incomes or class of cases, setting forth directions or instructions (not being prejudicial to assessees) as to the guidelines, principles or procedures to be followed by other income-tax authorities in

the work relating to assessment or collection of revenue or the initiation of proceedings for the imposition of penalties and any such order may, if the Board is of the opinion that it is necessary in the public interest so to do, be published and circulated in the prescribed manner for general information."

7. It is submitted by Mr Hemani that section 119(2)(a) does not contain any reference to Section 139 of the Act. The Central Board of Direct Taxes can issue instructions only with regard to the provisions contained in sections which are mentioned in the said section and since there was no reference to Section 139 of the Act, the Circular issued by the Central Board of Direct Taxes is without any authority. He has further submitted that reference to Section 139 was made in Section 119 by virtue of an amendment brought by Finance Act, 1990 with effect from 1.4.1990. Since the assessment year involved is assessment year 1973-74 and the circular was issued prior to that date, the said amendment would not be available to the authority while issuing such circular. Even with regard to the circular itself, Mr Hemani has submitted that in the last portion of the said circular, a reference was made that in terms of the proviso to the aforesaid Rule, i.e. Rule 117A(v), the previous approval of the Inspecting Assistant Commissioner will have to be obtained by the Income-tax Officer in cases where the amount of interest so waived exceeds Rs. 1,000/-. According to Mr Hemani, the circular was issued only for the purpose of waiver of interest and in no way it can extend the time for filing the return of income as envisaged under Section 139(1) of the Act.

8. On the basis of the aforesaid submission, Mr Hemani, learned advocate contended that the return filed by the assessee on 14.8.1973 was the return filed under Section 139(4) and the said return cannot be revised under Section 139(5) of the Act. The return filed by the assessee on 22.3.1976 was, therefore, not the valid return extending the period of limitation for completing the assessment. Since the assessment was based on that return, the said assessment was invalid and non-est. In support of this contention, he has relied on the decision of the Supreme Court in case of Kumar Jagdish Chandra Sinha vs. Commissioner of Income-tax, (1996) 220 ITR 67 wherein it has been held that no revised return can be filed under sub-section (5) of Section 139 in a case where the return is filed under Section 139(4). Once this is so the revised returns filed by the assessee for both the assessment years 1964-65 and 1965-66 were

invalid in law and could not have been treated and acted upon as revised returns contemplated by sub-section (5) of Section 139 and consequently section 153(1)(c) was not attracted. Mr Hemani, therefore, submitted that the assessment framed by the Income-tax Officer was obviously barred by limitation.

9. Mr BB Naik, learned standing counsel appearing for the department has supported the order passed by the authorities below and reiterated all the contentions raised by the department before the Tribunal.

10. As far as the first contention urged by Mr Hemani with regard to the powers of the Central Board of Direct Taxes under Section 119 is concerned, we are of the view that Section 119(1) specifically empowers the Board to issue such orders, instructions and directions to other Income-tax authorities as it may deem fit for the proper administration of the Act and such authorities and all other persons employed in the execution of the Act shall observer and follow such orders, instructions and direction of the Board. The only restrictions imposed in exercise of such powers under Section 119(1) are such that no such orders, instructions or directions shall be issued so as to require any income-tax authority to make a particular assessment or to dispose of a particular case in a particular manner and also to interfere with the discretion of the Appellate Assistant Commissioner in the exercise of his appellate functions. By issuance of Circular No. 113 dated 20.6.1973, the Board granted general extension for furnishing the returns of income and net wealth for assessment year 1973-74 till 15.8.1973. It cannot be said that the Board has issued the instruction to the Income-tax authorities to make a particular assessment or to dispose of particular case in a particular manner. Even if we consider the alternative limb of Mr Hemani's argument that Section 139 was inserted in Section 119(2)(a) by Finance Act, 1990 with effect from 1.4.1990, it cannot be said that prior to that date, there was any restriction on the exercise of powers by the Board under Section 119 of the Income-tax Act as sub-section (2) of Section 119 starts with the words "without prejudice to the generality of the foregoing power". It is also pertinent to note here that Circular No. 113 dated 20.6.1973 was issued by the Board with an intention to grant general extension to the assessees. The said circular was, therefore, benevolent in nature. It is for this reason, we hold that while exercising the powers conferred by Section 119(1) of the Act, the Board has issued the said circular granting general extension to the assessee and based on the said

circular, the return filed on 14.8.1973 by the assessee was treated as the return filed under Section 139(1) of the Act and since the said return was revised by the assessee on 22.3.1976 and the assessment was framed on the basis of that return, the said assessment cannot be held to be barred by limitation and it cannot be held as invalid or non-est. We are, therefore, not inclined to accept the argument of Mr Hemani, learned advocate that circular No. 113 dated 20.6.1973 was issued only with a view to enable the income-tax authorities to waive the interest in case the return for the assessment year 1973-74 was filed after the due date i.e. 30.6.1973. It is no where suggested in the said circular that the same was issued only for that purpose. The opening paragraph of the said circular is very clear. It says that the Board has decided to extend the time for furnishing returns of income and net wealth for assessment year 1973-74 till 15.8.1973 in case where returns are due to be filed by 30.6.1973 or 31.7.1973. Thus, the said circular was issued practically for several purposes of the Act, which inter alia, includes the purpose of treating the return filed on or before 15.8.1973 but after its due date, as the return filed under Section 139(1) of the Act. The reference in the circular regarding Rule 117A(v) of the Income-tax Rules is only for the purpose of giving instructions to the Income-tax Officers to reduce or waive interest payable under Section 139 of the Act by invoking the provisions contained in the said Rule.

11. In view of the above discussion, and also in view of the fact that the return filed by the assessee on 14.8.1973 is treated by us as the return filed under Section 139(1) of the Act, the return filed on 22.3.1976 is necessarily to be considered as the return filed under section 139(5) of the Act. We are, therefore, of the view that the decision relied upon by Mr Hemani, learned advocate, in the case of Kumar Jagdish Chandra Sinha vs. Commissioner of Income-tax (Supra) would not render any assistance to him as the said decision is applicable in a case where the original return is filed under Section 139(4) and the same is sought to be revised under Section 139(5) and based on those facts, the Supreme Court has held that the revised returns filed by the assessee for both the assessment years were invalid in law and could not have been treated and acted upon as revised returns contemplated under sub-section (5) of Section 139 and consequently Section 153(1)(c) was not attracted. In this view of the matter, we are of opinion that the revised return filed by the assessee on 22.3.1976 was a valid return and the assessment based on that return is

also valid, legal and in accordance with the provisions of the Act. In this view of the matter, the provisions contained in Section 153(1)(c) of the Act was clearly attracted enabling the Assessing Officer to pass the assessment order within one year from the end of the month in which the revised return was filed. Since the assessment was made within this period, it cannot be said that the said assessment was either invalid or non-est or barred by limitation. We are, therefore, of the view that the Tribunal has not committed any error in holding that the return filed on 14.8.1973 was actually a return under Section 139(1) and that consequently the provisions of Section 153(1)(c) are attracted and, therefore, the assessment completed on 15.3.1977 is not barred by limitation.

12. We, therefore, answer the question referred to us in the negative i.e. in favour of the revenue and against the assessee.

13. The reference is accordingly disposed of with no order as to costs.

(M.S. Shah, J.) (K.A. Puj, J.)

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